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October 23, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Comment and Reply Comments  
WT Docket No. 03-66 (RM-10586)

Dear Madam Secretary:

This is a comment on the question of "whether continuing to restrict the eligibility for ITFS spectrum is in the public interest or whether maintaining educational responsibilities remains in the public interest" (NPRM ¶ 114). Clarendon Foundation supports open eligibility to allow commercial interests to acquire ITFS spectrum, as a preferred alternative to reallocation of underutilized ITFS spectrum or loss of ITFS licenses by educational institutions which do not have the ability to independently transmit the required instructional programming.

**Discussion**

During the period beginning in 1991 and ending in 1995, Clarendon Foundation applied for 18 ITFS licenses. Fourteen of the applications were granted. In addition, Clarendon Foundation assisted over 70 educational institutions in 21 states in applying for licenses. All of the licenses involved leases of the excess capacity ITFS airtime by wireless operators. All of the applications were to provide instructional television service. Although most of the systems have been "constructed," only five systems are actually broadcasting instructional programming to educational institutions. Other markets are in various stages of development and deployment. Many of the markets we intend to serve are in the rural areas and small communities.

Since 1995, the year of the last open ITFS filing window, a number of major developments have occurred in relatively rapid succession, which have been dictated by external political and market forces. The wireless operators that initially leased ITFS spectrum for subscription television systems have, for the most part, either gone out of business or sold their assets (including ITFS excess capacity airtime leases) to major telecommunications companies. The new operators, with a few exceptions, have renegotiated airtime lease terms so that the spectrum could be used for two-way broadband systems.

In the Telecommunications Act of 1996, Congress adopted a national goal to promote the rapid deployment of broadband services. The Federal Communications Commission ("Commission") was instructed "to conduct regular inquiries concerning the availability of advanced telecommunications capability and, based on its findings, to take action to accelerate deployment, if necessary" (FCC Docket No. 98-146). Congress also instructed the Commission to hold auctions for ITFS spectrum where mutually exclusive applications had been filed.

Wireless communications companies filed petitions asking the Commission to reallocate the ITFS spectrum for 3 G mobile use. The Commission instead decided to revise the ITFS regulations to permit digital and analog transmissions, as well as fixed and mobile services on the spectrum. Last year, the Commission transferred the responsibility for administering the ITFS program from the Mass Media (now Media) Bureau to the Wireless Telecommunications Bureau. A complete re-cataloging of the licenses was undertaken.

The major telecommunications companies that acquired the assets of the wireless cable operators, including the ITFS airtime leases, redesigned their fixed wireless broadband systems in a cellular configuration. The new cellularization technology allows the reuse of frequencies within a market. It is now possible to serve major metropolitan areas with as few as 8 to 12 ITFS or MDS channels. Wireless cable television systems required a minimum of 32 MDS and ITFS channels to be viable.

In test market studies, it was determined that the equipment needed for the operation of "fixed wireless" broadband systems was not suitable due to installation difficulties. Manufacturers were asked to redesign the transmission and reception equipment to meet industry needs. A second series of test markets have been run with more favorable results. Telecommunications companies have plans to begin launching fixed wireless broadband systems that include the use of ITFS spectrum in the first quarter of 2004.

In spite of these positive developments, two major operators, MCI WorldCom and Nucentrix Broadband Networks, have recently filed for bankruptcy. It appears that certain assets, including ITFS airtime leases, will be either be sold to other parties or abandoned. This scenario may play out repeatedly with other wireless operators, if the economy does not significantly improve.

Future challenges are on the foreseeable horizon. What happens in the not-to-distant future when analog television disappears from the face of the earth? Under the FCC plan for digital commercial television (HDTV), many individuals and institutions will be acquiring new digital television sets over the next 5 years. Are educational institutions going to have the funding to replace all of the set top boxes? Are customers going to pay for a new piece of equipment that provides a downgraded video image? Now even fewer people in the community will be able to receive the ITFS programming.

The future will also present new opportunities. Media streaming is in its infancy, in part because of the lack of broadband services. Rolling out markets with fixed wireless broadband could allow licensees to transmit their instructional television programming over "internet 2," all across the country, not simply in their local areas.

It is abundantly clear that the telecommunications industry has been, is now, and will be in a constant state of flux for the foreseeable future. Unfortunately, this will necessarily impact the educational community. Most of the educational institutions and nonprofit organizations that hold ITFS licenses are bound by airtime lease agreements, and have had to operate in this volatile and unpredictable environment – something they are not well equipped to do. This has led to a great deal of frustration on the part of many ITFS licensees.

The hard reality is that the current environment could tend to produce undesirable outcomes for many ITFS licensees (as it already has for many licensees holding leases with WorldCom and Nucentrix). Due to the reduced need for spectrum to build out a viable wireless system, it is likely that operators will terminate some of the ITFS leases in their markets. Most licensees do not have the capability of constructing and operating an instructional television or fixed wireless broadband system with their own resources. In short order, those educational institutions and nonprofit organizations will be faced with loss of their licenses for failure to meet requirements to transmit instructional programming.

Due to the increasing need for spectrum in our Digital Age, new petitions to reallocate unutilized or underutilized ITFS spectrum can be anticipated. A decision to reallocate spectrum could unfavorably impact even those ITFS licensees that are able to continue their operations.

Faced with these very real prospects, we firmly believe that it is in the best interests not only of the public, but also of the educational community, for the Commission to amend its rules to provide for open eligibility. The blunt truth is that some licensees are going to be faced with a loss of their license if options are restricted. It would be far better to allow ITFS licensees to sell their assets to a commercial entity than lose all that they have invested.

We view this issue as a matter of flexibility in meeting national goals to deploy broadband services and efficiently utilize available spectrum, more than it is an ideological issue. The best way to make certain that ITFS will not become subject to a reallocation proceeding is to provide maximum flexibility to the license holders to decide what is the best use of the spectrum, including selling it and using the proceeds to fulfill their educational mission in other ways. A limitation of options will inevitably leave some institutions with no viable alternative except to surrender their licenses.

In general, Clarendon Foundation supports the position taken by NITV in these proceedings requesting that the Commission "change its long-standing eligibility restrictions by permitting commercial interests to hold ITFS licenses and requiring them to make capacity available for educational use." We would propose that any such educational requirements be made by local governmental authorities as a part of a community-wide plan for the deployment of broadband services, rather than imposed by federal regulations.

Our experience in the wireless cable television industry has shown that it is counterproductive to impose different requirements depending upon the regulatory authority. This position is consistent with the Commission's goal of promoting the deployment of broadband services. A differing educational use requirement for fixed wireless broadband service would confer a

competitive advantage, one way or the other, over the alternative services over Digital Subscriber Line, Cable Modems, or LEC-provided hardware.

A final comment is in order. Since the ITFS channels has been authorized for mobile uses and instructional television service is an increasingly obsolete technology, a name change for this bandwidth is in order.

We appreciate this opportunity to comment on the NPRM and hope that this input will assist the Commission in reaching a determination that promotes the public interest.

Yours truly,

/s/ Kemp R. Harshman

Kemp R. Harshman  
President